

1:04cv204

Defendant.

ORDER

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Plaintiff has requested an opportunity to file a reply memorandum to the Defendant's response in opposition to Plaintiff's motion for partial summary judgment. Defendant's response was filed on August 18, 2005, and was served on Plaintiff's counsel by mail. Local Rule 7.1(b) affords seven days from the date of service to file a reply memorandum, with an additional three days allowed if the response was served by mail. **W.D.N.C. LR 7.1(b).**

Federal Rule of Civil Procedure Rule 6(a) provides that "[w]hen the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation." **Fed. R. Civ. P. 6(a).** Finally, when both Rule 6(a) and Rule 6(e) (which provides for an additional three days when service is effectuated by mail) are applicable, the exclusionary provision of Rule 6(a) is applied prior to applying the additional three days afforded by Rule 6(e), and the additional three days provided by Rule 6(e) are not covered by the weekend and holiday-excluding provision of Rule 6(a). **See *Holz-her U.S., Inc. v. Monarch Mach., Inc.*, 187 F.R.Ed. 238, 240 n.1 (W.D.N.C. 1999) (adopting the procedure to use when applying both Federal Rule of Civil Procedure 6(a) and 6(e) contained in *CNPq-Conselho Nacional de Desenvolvimento Cientifico e Tecnologico v.***

***Inter-Trade, Inc.*, 50 F.3d 56, (D.C. Cir. 1995)).** Based on these Rules, Plaintiff had seven days from August 18, 2005, exclusive of weekends and holidays, plus an additional three days, inclusive of weekends and holidays, within which to file her reply.

The Magistrate Judge's Memorandum and Recommendation, dated August 23, 2005, was issued three (3) days into Plaintiff's reply period. **Fed. R. Civ. P. 6(a) (weekends not counted when period of time proscribed or allowed is less than 11 days).** Plaintiff therefore still had, and will be granted, four days, exclusive of weekends or holidays, plus an additional three days, inclusive of weekends and holidays, plus three more days due to service of this Memorandum and Decision, within which to file her reply. **W.D.N.C. LR 7.1(b); Fed. R. Civ. P. 6(a); Fed. R. Civ. P. 6(e).** Plaintiff's reply memorandum should be limited to a discussion of matters newly raised in the Defendant's response. **W.D.N.C. LR 7.1(b).**

IT IS, THEREFORE, ORDERED that the Plaintiff may file a reply in accordance with this decision.

Signed: October 11, 2005

A handwritten signature in dark ink, appearing to read "L. H. Thornburg", written over a horizontal line.

Lacy H. Thornburg
United States District Judge

